

**Court No. - 10**

**Case :-** MISC. BENCH No. - 3340 of 2008

**Petitioner :-** Anoop Gupta ( P.I.L.Civil)

**Respondent :-** Union Of India Thru Secy. & 5 Ors.

**Counsel for Petitioner :-** Umesh Verma, Adarsh Mehrotra

**Counsel for Respondent :-** C.S.C., A.S.G., Amit Kumar Singh

Bhadauri, Apoorva Tiwari (Amicus Cur), G.K. Singh, M.S.

Pawar, Ms., Nishant Shukla, Som Kartik Shukla

**Hon'ble Devendra Kumar Upadhyaya, J.**

**Hon'ble Rajan Roy, J.**

Through this Public Interest Litigation this Bench has been monitoring implementation of Juvenile Justice Act.

Today Shri Apoorva Tiwari, learned *Amicus* informed the Court about the fact that the term of several members of the Juvenile Justice Boards and the Child Welfare Committees has expired in December, 2019. He also informed that a Government Order dated 31.01.2020 has been issued by the State Government by which, for the Child Welfare Committees (hereinafter referred to as 'CWC') it has been provided that till selection of new members is made, the work of the Committee shall be performed at the district level by the Additional District Magistrate/Sub Divisional Magistrate level officer nominated by the District Magistrate. So far as the work of the Juvenile Justice Boards is concerned, it has been provided that till selection of its members is made, the Chief Judicial Magistrate/Chief Metropolitan Magistrate or any Judicial Magistrate nominated by the District Judge shall perform the work.

In view of the Rules framed under Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'the Act

2015'), namely, Juvenile Justice (Care and Protection of Children) Rules, 2019 (hereinafter referred to as 'Rules 2019') Shri Manjeev Shukla, learned Additional Chief Standing Counsel appearing for the State informs that the State Government was not in a position to extend the term of the erstwhile members as had been done in the year 2016 when a similar situation had arisen and the term had been extended vide Government Order dated 19.08.2016 in view of Rule 5(1) and (2) of the Model Rules of 2016 and Section 15(4) and 27(6) of the Act, 2015. He also informs that it is in these compelling circumstances that the Government Order dated 31.01.2020 has been issued so as to ensure smooth functioning of CWCs and JJBs in the State.

The term of members of Juvenile Justice Board is prescribed in Rule 5(1) of the Rules 2019 as three years from the date of appointment. Sub Rule 2 thereof provides that a social worker member of the Board shall be eligible for appointment for maximum of two terms, which shall not be continuous. Now with regard to CWC also as per section 27(6) of the Act 2015; the term for members appears to be three years and the provision analogous to sub rule 5(2) is contained in Rule 15(4). Similar provisions existed in the Model Rules of 2016 which were applicable prior to coming into force of 2019 Rules.

We do not doubt the intent of the Government, however, we find that its order dated 31.01.2020 is not in tune with the provision of the Act, 2015 and the Rules framed thereunder. For selection and appointment of members of the CWC, there are certain conditions

including qualifications prescribed. Moreover, the Committee as per Section 27(2) of the Act, 2015 is to consist of a Chairperson and four other members. Sub-section 4 thereof provides that no person shall be appointed as a member of the Committee unless such person has been actively involved in health, education or welfare activities pertaining to children for atleast seven years or is a practicing professional with a degree in child psychology or psychiatry or law or social work or sociology or human development. In this view of the matter, the nomination of one person by the District Magistrate whether it be the Additional District Magistrate or the Sub Divisional Magistrate for performing the work of the entire CWC cannot be said to be in accordance with the provisions of the Act, 2015.

Similar is the situation so far as Juvenile Justice Boards (hereinafter referred to as 'the JJBs') are concerned. Under Section 4 (2) of the Act 2015 the JJB is to consist of a Metropolitan Magistrate or a Judicial Magistrate of First Class not being the Chief Metropolitan Magistrate or the Chief Judicial Magistrate (hereinafter referred to as the Principal Magistrate) with at least three years experience and two social worker members selected in such manner, as may be prescribed, of whom, atleast one should be a woman. This Board is to function as a Bench, meaning thereby all members are to sit together to hear a case. In the absence of the Judicial Magistrate the other two members cannot dispose of the matter but they can conduct proceedings otherwise. Thus, the act specifically bars the Chief Metropolitan Magistrate or the Chief Judicial Magistrate from functioning as members of the Board, whereas

the Government Order dated 30.01.2020 authorizes either the Chief Judicial Magistrate/Chief Metropolitan Magistrate or a judicial Magistrate nominated by the District Judge. Moreover, the Act, 2015 does not contemplate a one member Juvenile Justice Board.

Even at the cost of repetition, we would like to put it on record that we do not doubt the intent of the Government in coming out with such a Government Order obviously on account of unforeseen situation which has emerged because the Selection Committee, which is said to have been constituted in the year 2018 but could not hold the selection nor recommend the names for appointment as members of JJBs and CWCs but, the arrangement sought to be made through the Government Order 31.01.2020 is susceptible to challenge for reasons stated herein above which could compromise the best interest of the child and the Act, 2015 itself, as such, the need to provide a better solution to the problem.

In fact, Shri Manjeev Shukla, learned Additional Chief Standing Counsel representing the State has also informed that the Government Order dated 31.01.2020 has been challenged before this Court at Allahabad in Public Interest Litigation (PIL) No.222 of 2020 wherein vide order dated 05.02.2020 the State Government has been asked to inform the Court as to when it proposes to constitute valid Juvenile Justice Boards and Child Welfare Committees in accordance with the Act.

We are conscious of the rule position which prohibits appointment of a member of CWC or JJB for two continuous terms, but we are also conscious of the need to protect the best interest of children under the Act, 2015 and the importance of duties assigned to CWCs and JJBs under the said Act, 2015 and the Rules framed thereunder. Therefore, we find ourselves compelled to pass necessary orders for ensuring smooth and unhindered functioning of CWCs and JJBs.

In view of the aforesaid, we are of the view that appropriate interim arrangement is required to be made so that functioning of CWCs and JJBs throughout the State of Uttar Pradesh does not come to a standstill and to this effect we order that all members of CWCs and JJBs, who were functioning till December, 2019 based on their selection and appointment made earlier, shall continue to function as such and discharge their duties under the Act, 2015, as they were discharging earlier, under order of this Court. They shall be paid remuneration, if any, as earlier. However, their continuance as such shall not be treated an appointment for the purposes of Rule 5(2) and 15(4) of the Rules, 2019 and no rights shall accrue to them to continue once the new incumbent joins or this Court otherwise restrains them from functioning. This interim arrangement shall continue only till the new incumbents are selected, appointed and take charge.

In this regard, we further direct that the Selection Committee which has been constituted for this purpose shall make its recommendation to the State Government by 31.05.2020. Thereafter the

State Government shall scrutinize the matter and issue appointment letters to the eligible and suitable candidates within ten days from the date the recommendations of the Selection Committee are received. The new appointees shall be sent for training which is said to be of fifteen days. The State Government shall make all efforts that the new appointees to the CWCs and JJBs take charge by 1st of July, 2020. This order shall be communicated by the Director, Women Welfare to the Chairperson of the Selection Committee.

We make it clear that we have passed this order in the peculiar and unforeseen circumstances which have presented before us as in the event we do not interfere as aforesaid it will result in utter chaos and confusion so far as the implementation of the Act 2015 is concerned in the entire State of Uttar Pradesh.

In the process of passing this order, we have noticed a contradiction in Rule 88(6), 5(2) and 15(4) of the Rules, 2019. It is expected that the State Government shall have a relook at the Rules, 2019 in this regard.

This apart, Shri Manjeev Shukla, learned Additional Chief Standing Counsel has informed the Court that in pursuance to the earlier order of this Court dated 06.12.2019 Mahila Kalyan Vibhag and Divyang Jan Vibhag have discussed and have worked out a proposal for establishment of atleast 2 homes for children with special needs, one at Lucknow and the other at Gorakhpur. Further, there is a proposal to convert one upcoming children home at Varanasi to cater to the need of

children with special needs. In this view of the matter, we are of the opinion that the order dated 14.01.2020 for shifting two children referred to in our earlier order, elsewhere from Drishti Samajik Sansthan shall be kept in abeyance as an exceptional measure as the institution where they have been ordered to be shifted admittedly does not have requisite facilities to cater to the need of children with special needs.

Further, Shri Nishant Shukla, learned counsel representing the Central Government has placed before this Court a circular of the Central Government dated 24.12.2019, a copy of which has been handed over to Shri Manjeev Shukla, learned Additional Chief Standing Counsel representing the State which informs all Principal Secretaries of Woman and Child Development of all the States that Project Approval Board Meeting to discuss the annual plan 2020-21 will be held in the March, 2020. We direct the State Government to take cognizance of the said circular and whatever pending proposals are there or those it seeks to initiate for the year 2020-21, shall be placed before the ensuing PAB meeting positively. The said circular also mentions that annual action plan/financial proposal along with situational analysis report for the year 2020-21 should be submitted latest by 28.02.2020.

Shri Apoorva Tiwari, learned Amicus also informed that an application claiming enhanced non recurring grant on completion of five years has been sent by the Drishti Samajik Sansthan to the District

Probation Officer, Lucknow on 16.11.2019. He prays that the same may be processed and be placed before the PAB in the ensuing meeting. We direct the District Probation Officer, Lucknow to process the same and forward it to the competent level at the earliest so that the said matter is also taken up in the PAB Meeting. All other matters involving claim of funds etc. which are required to be placed before the PAB shall be sorted out by the State Government and placed in the next meeting before the due date.

**List this case on 10.04.2020 at 3.00 P.M.**

**Order Date :- 7.2.2020**

akhilesh/sanjay

**[Rajan Roy, J.] [D. K. Upadhyaya, J.]**